

UNITED STATES CIVIL SERVICE COMMISSION

FEDERAL PERSONNEL MANUAL SYSTEM

LETTER

Washington, D.C. 20415

FPM LETTER NO. 930-

SUBJECT: Filling Attorney Positions

Heads of Departments and Independent Establishments:

1. Most positions in the excepted service including attorneys and law clerks must be filled in accordance with the instructions contained in part 302 of the Commission's regulations and chapter 302 of the Federal Personnel Manual. These procedures are outlined in Attachment 1. A recent review by the Bureau of Personnel Management Evaluation indicated that many agencies were not adhering to the procedures contained in chapter 302 when filling their attorney and law clerk positions.
2. An agency which desires to use procedures which vary from those contained in chapter 302 may develop a special agency plan. However, before this plan may be used, it must be approved by the Civil Service Commission.
3. Attached to this letter (Attachment 2) is a special agency plan which has been approved for use by the Commission's Office of the General Counsel. This special agency plan differs only slightly from the requirements of chapter 302, and it would be expected that most agency plans which the Commission approves would not depart too far from the basic requirements of chapter 302.
4. Although you may wish to use the attached plan as a model for a special agency plan, it should not be regarded as an approved plan for all agencies. Therefore, even if your agency decides to use the exact same plan contained in this model, you still must submit it to the Commission for approval as a special agency plan. Requests for approval should be submitted to the Office of Staffing Services, Bureau of Recruiting and Examining.

Raymond Jacobson
Executive Director

Attachments

INQUIRIES: Staffing Resources Division, BRE, 632-4533

CSC CODE 930-Programs for Specific Positions

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Outline of Civil Service Commission Regulations
for Excepted Service Appointment

Federal civil service positions may be excepted by statute, Executive order, or Commission regulation. "Excepted" means the position is not filled under the competitive examination or other employment requirements of the Commission. Unless otherwise exempted, the job remains subject to other Commission-administered systems such as position classification, pay, retirement, and life insurance.

Attorneys and law clerk trainee positions are excepted from the competitive service by the administrative action of the Commission under its Schedule A regulations.

Nevertheless, there are two areas in which Commission regulations play a key role in selecting appointees for excepted jobs, including attorneys and law clerks:

1. The Civil Rights Act, as amended by the Equal Employment Opportunity Act (section 717, now 42 U.S.C. 2000e-16) requires that all personnel actions affecting applicants or employees be free from any discrimination based on race, color, religion, sex, or national origin. Commission regulations for enforcing these provisions appear in 5 CFR 713.
2. The Commission is required by statute (5 U.S.C. 1302(c)) to prescribe regulations (5 CFR 302; FPM, chapter 302) to give preference and other benefits to veterans (Veterans' Preference Act, 5 U.S.C. 3308-18, etc.), in appointment, reinstatement, reemployment, and retention in executive agencies and the District of Columbia Government for positions in the excepted service. Each agency head is responsible for applying the regulations to excepted hiring operations. When filling attorney GS-16/18 positions, in addition to observing these regulations, agencies may only appoint a person whose qualifications the Commission has approved (5 U.S.C. 3324).

Part 302 regulations generally require agencies to follow a rating and ranking procedure with the same features as the competitive examining system--uniform application of established qualification standards, assignment of individual numerical ratings, addition of 5 or 10 points for veteran preference, and selection under the rule of three from among those ranked highest. More specifically, the regulations call on each agency to take the following actions:

PROCEDURES FOR ACCEPTING, EVALUATING, AND SELECTING APPLICANTS

- establish written rules regarding acceptance of applications under these regulations.

QUALIFICATION STANDARDS

- develop own job-related qualification standards for the position to be filled, covering minimum experience and training requirements, physical condition, age, and citizenship.
 - o qualification standards for GS-16/18 attorney positions must be submitted to the Commission's Bureau of Executive Personnel for approval
- develop a rating schedule, that is, a written guideline to assist the rater in evaluating individual candidates against the qualification standard. It should also include instructions for awarding extra points based on quality, type, etc., of experience, education, or other skills, knowledge, and abilities offered by eligible candidates in order to fairly distinguish among them based on relative merit. For assistance, refer to Commission hiring pattern information on attorneys in FPM chapter 930 and position classification standards.
- do not include a positive education requirement except for professional (e.g., attorney), scientific, or technical jobs, and only then if considered essential.
 - o attorneys must have bar membership
- waive age, height, weight, and physical requirements for preference eligibles under conditions provided in the regulations.

EVALUATION OF APPLICANTS' QUALIFICATIONS

- apply standards uniformly to all applicants and decide whether each individual is qualified or ineligible.
- to each qualified applicant, based on the rating schedule, assign a numerical rating between 70 and 100 to reflect the extent to which experience and training requirements are met or exceeded.
 - o exceptions:
 - o if there are too many eligibles, assign numerical ratings only to enough of the highest qualified applicants sufficient to meet anticipated needs.

oo if there are so few eligibles that all will be considered for appointment, no numerical ratings are needed.

- add 5 or 10 points as appropriate (see FPM chapter 211) to numerical ratings of preference eligibles.
- for preference eligibles, count military service as a continuation of previous experience if similar to work for which applying; count all valuable experience, including that gained in civic, religious, service, or welfare activities, whether paid or unpaid.

ORDER OF CONSIDERATION FOR APPOINTMENT (RANKING)

Within each of the following categories, names of eligibles are listed in descending order of their numerical ratings, as augmented by preference points. When ratings are the same, preference eligibles are listed ahead of others.

- For professional (e.g., attorneys) and scientific jobs at GS-9 and above:
 1. reemployment list--names of former agency employees (see 5 CFR 302.303(b) for content and organization of list).
 2. all others.
- For all other jobs (e.g., law clerk trainees).
 1. compensable preference eligibles on reemployment list. Compensable preference (CP) means the candidate has a compensable service-connected disability of 10 percent or more and is entitled to 10-point veteran preference. See FPM chapter 211 and FPM Supplement 296-31, appendix B, for instructions on determining veteran preference claims.
 2. other CP's (Commission regulations in 5 CFR 302.304 permit agencies to decide whether to next consider this category or the category 3 group below.) (If the latter category is considered first, then this category ("other CP") is considered next).
 3. others on reemployment list (may be switched with category 2 group above).
 4. other eligibles.

SELECTION AND APPOINTMENT

- select for appointment to each vacancy from not more than the highest three names available ("rule of three") in the order of consideration described above.
 - o for GS-16/18 attorney positions, the proposed appointee's qualifications must be submitted to the Commission's Bureau of Executive Personnel for approval.
- must record its reasons, and on request make a copy available to the veteran, if it passes over the name of a preference eligible and selects a nonpreference eligible.

EXEMPTIONS

The Commission's regulations authorize some exemptions from part 302 requirements for veteran preference:

- positions filled under Schedule C, Noncareer Executive Assignment, and other appointing authorities or conditions specified in 5 CFR 302.101. No prior Commission approval is needed. However, agencies are enjoined to follow the principles of veteran preference as far as administratively feasible.
- with prior CSC approval, an agency may use a modified appointment system which provides for application of veteran preference but in a manner other than the regulations specify. For example, in ERDA and TVA instead of receiving an individual numerical rating, an eligible is assigned an adjective rating (quality category). Within each category, veterans are considered before nonveterans.

OTHER PROVISIONS

Requirements which generally do not apply to filling excepted positions under Schedule A:

- apportionment
- United States citizenship
- members-of-family
- Commission physical standards
- Commission qualification standards--but, for GS-16/18 attorney positions, only the Commission approved standard may be used
- Commission time-in-grade requirements (*Statutory regulations do apply - written Amendment*)

A maximum age limit may not be applied without Commission approval (Age Discrimination in Employment Act, section 15: 29 U.S.C. 633a(b)).

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U.S. Civil Service Commission--
Procedures for Employment of
Attorneys At All Grade Levels and Law Clerk Trainees

Attorneys are appointed in the U.S. Civil Service Commission's Office of the General Counsel (OGC) under authority of Schedule A, section 213.3102 of the civil service regulations (5 CFR 213.3102). All selections are based solely on merit, with no discrimination for nonmerit reasons such as race, color, religion, sex, national origin, politics, marital status, physical handicap, or age. OGC selection procedures also give effect to all veteran preference entitlements.

The following selection procedures are applicable except in those cases where the position is filled by the appointment of a former employee entitled to reemployment benefits under 5 CFR 302.303, a person entitled to priority consideration is selected for the position, the position is filled by promotion of an OGC existing employee or a former employee given reappointment rights under 5 CFR 302.402.

I. JOB INTEREST FILE

All applications for employment as an attorney or as a law clerk trainee that are received without regard to a specific vacancy announcement as described in II(c) below, shall be responded to within 2 weeks of receipt. The applicant shall be told that there is no vacancy available at that time and that he or she should

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advise the Deputy General Counsel or his/her designee in writing within 2 weeks if it is desired that OGC consider the application when a position does become available. The applications of persons who do not respond within the prescribed time that they wish to be considered for future vacancies shall be destroyed or returned to the applicant. All other applications shall be retained in the OGC Job Interest File for a period of 2 years.

II. RECRUITMENT

(A) Notice - When it is desired to recruit outside the Commission's Office of the General Counsel to fill an attorney position, the vacancy will be publicized to the extent necessary to obtain an adequate number of qualified candidates. As a minimum, information concerning the position will be provided to recruitment sources at least 2 weeks prior to the closing date for receipt of applications.

(B) Recruitment Sources - Recruitment sources should be selected to ensure that notice of the vacancy receives broad, national coverage. Suggested sources are:

- (1) Civil Service Commission job information centers
- (2) Local and State Bar Associations
- (3) Law schools
- (4) Employee information bulletins
- (5) Law journals and other legal publications

Also, separate notice should be sent to those persons listed in OGC's Job Interest File and to any persons eligible for reemployment consideration.

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(C) Vacancy Announcement - A vacancy announcement prepared by the OGC Administrative Office, under the direction of the Deputy General Counsel, constitutes the recruitment notice. The closing date for submission of applications must be in no case less than 2 weeks from the date of issuance. Generally a closing date is not set to fall on Saturday, Sunday, or a holiday. Applications received after the closing date are accepted if the envelope is postmarked before midnight of the closing date, or midnight of the workday following a closing date falling on a Sunday or legal holiday.

Announcements should be attractively prepared and concisely worded. All essential information should be provided to attract qualified applicants, as well as to minimize receipt of applications from persons who are not qualified for the announced position.

As a minimum, the following information should be included in each vacancy announcement:

- (1) Name and address of person or office to whom application should be sent, and other instructions concerning how to apply (e.g., where to obtain forms).
- (2) Title of position, grade and salary rate.
- (3) Location of position.
- (4) Issue date of announcement.
- (5) Filing period.
- (6) A clear statement of the important duties of the position, including any special selection factors that may be used for the vacant position (e.g., training or experience in accounting,

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(7) An explanation of the basis for rating, including the fact that no written examination is required but that a writing sample of the applicant's choice is to be submitted with the application.

(8) Information concerning veteran preference benefits for five-and ten-point veterans.

(9) Statement that appointments are excepted from competitive service.

III. QUALIFICATION STANDARDS

A. Qualification standards and requirements will be established prior to the announcement of each vacancy and retained on file for each attorney and law clerk positions filled under these procedures.

B. The minimum qualification requirements for attorney positions shall include:

1. Membership in good standing in the Bar of a State, District of Columbia, or Commonwealth of Puerto Rico; and
2. Relevant experience or education which demonstrates the possession of particular knowledges or skills essential to satisfactory performance in the particular position.

C. The minimum qualification requirements for law clerk positions shall include:

1. Satisfactory completion of all academic requirements for the first degree in law (bachelor of law or J.D.) at the time of appointment; or

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2. Proof of admission to bar examination by any State, the District of Columbia, or Commonwealth of Puerto Rico within 6 months of initial appointment; and
3. Any specific qualification demand essential to satisfactory performance of the specific position.

IV. RATING PROCESS

(A) Initial Step - The applications will be divided into two categories -- "eligible for consideration" and "ineligible." An applicant is eligible for consideration if he or she satisfies the applicable qualification standards, described in III, above.

(B) Second Step - The eligible applicants will be divided into two further categories -- "highly qualified" and "other" -- by the Deputy General Counsel or his/her designee(s). The categorization shall be based upon an evaluation of academic achievement (including work of significance on a law school's official law review or journal; honors, such as election to the Order of the Coif; significant participation in moot court competition; significant participation in a clinical law program; and achievement of a second professional law degree), demonstrated writing ability, experience and achievement in the legal field, and achievement in whatever special areas are relevant to the position in question (e.g., training or experience in accounting).

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(C) Oral Interview (Optional) - The Deputy General Counsel or his/her designee(s) may arrange an oral interview with any or all applicants. The person conducting the interview shall write a memorandum to the file, which shall be appended to the applicant's file, analyzing and summarizing the applicant's qualifications and suitability.

(D) Ranking of the "Highly Qualified" - Based on the factors set forth in (B) above, the Deputy General Counsel or his/her designee(s) shall rate all "highly qualified" applicants on a scale up to 100, after which veteran preference points shall be added as appropriate. Thereafter, the Deputy General Counsel or his/her designee(s) shall set forth in rank order, as augmented by veteran preference points, the names of the three highest ranking applicants.

(E) Selection - The names of the three highest ranking "highly qualified" applicants shall be submitted to the General Counsel or Deputy General Counsel, as the case may be, for final selection.

(F) Documentation of Reason for Passing Over Preference Eligible - If a nonveteran is selected and there are preference eligible applicants in the "qualified" category, the reasons for passing over the veterans must be documented and made available to the affected veteran(s) on request.

V. REEMPLOYMENT LIST

A. The applications of all former employees entitled to listing on the reemployment list pursuant to 5 CFR 302.303(b) shall be maintained on permanent file until such time as the reemployment

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eligible: (1) is reappointed; or (2) requests that he or she be removed from the reemployment list. Former employees with veterans' preference status who left employment of their own accord do not acquire any reemployment entitlements.

B. As vacancies occur, eligibles on the reemployment list will be rated and ranked for the specific vacancy under the same rating schedule and procedures as described in section IV, above.

C. Reemployment eligibles will be listed on the selection certificate and considered ahead of regular eligibles in accordance with 5 CFR 302.304(d).